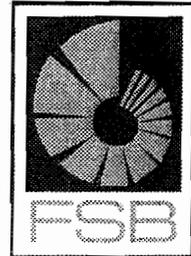

BOARD NOTICE

BOARD NOTICE 75 OF 2009**DIRECTIVE PF No. 4****Date issued: 8 June 2009****FINANCIAL SERVICES BOARD
REPUBLIC OF SOUTH AFRICA****PENSION FUNDS ACT (ACT 24 OF 1956)****SECTION 28****VOLUNTARY DISSOLUTION OR PARTIAL DISSOLUTION OF A FUND****1. PURPOSE**

This Directive provides guidance in respect of the information that the Registrar will require from a fund and/or Liquidator in exercising his or her powers and functions under section 28 of the Pension Funds Act, No. 24 of 1956 ("the Act").

2. EXPLANATORY DEFINITIONS

"Authorised representative" means the person(s) appointed by the Registrar.

"Liquidator" means the Liquidator appointed by the board of fund, Section 26 appointed trustee or Authorised representative and whose appointment has been approved by the Registrar in terms of section 28(2) of the Act.

"Section 26 appointed trustee", means a person or persons appointed by the Registrar in terms of the provisions of section 26(2) of the Act.

3. APPLICATION TO BE LISTED ON THE PANEL OF APPROVED LIQUIDATORS FOR PENSION FUNDS

3.1 The purpose of the panel is to expedite the appointment of a Liquidator by a fund and approval of the appointment by the Registrar.

3.2 To be listed on the panel of liquidators, a Liquidator must submit an application in the format set out in **Form A**.

4. APPLICATION FOR THE APPROVAL OF THE APPOINTMENT OF A LIQUIDATOR UNDER SECTION 28(2) OF THE ACT

4.1 Once a Liquidator has been appointed by the fund and the Liquidator has accepted the appointment, an application must be made as follows:

- **Form B** must be completed by the board of the fund, Section 26 appointed trustee or Authorised representative;
- **Form C** must be completed by the appointed Liquidator; and
- A copy of the board resolution approving the liquidation of the fund and the appointment of the Liquidator must accompany the application.

4.2 The liquidation deems to commence on the date of the approval of the Liquidator by the Registrar.

4.3 Where for any reason a Liquidator has to be replaced, the appointed Liquidator or the responsible person of the administrator (appointed in accordance with section 13B of the Act), must submit an application in the format set out on **Form C** to the Registrar.

The following information must accompany such application:

- (a) the reasons for the replacement of the Liquidator;
- (b) a confirmation that the members have been informed of the replacement of the Liquidator;
- (c) a confirmation that the total remuneration paid to appointed Liquidators will not exceed the maximum prescribed remuneration as prescribed by Registrar by Board Notice; and
- (d) a confirmation that all the relevant documentation relating to the liquidation has been made available to the newly appointed Liquidator, where applicable.

5. REMUNERATION OF A LIQUIDATOR

The remuneration payable to a Liquidator is prescribed by Board Notice by the Registrar under section 28A of the Act.

6. APPLICATION UNDER SECTION 28(7A) FOR EXEMPTION FROM SECTIONS 28(6) AND 28(7) OF THE ACT

6.1 The Liquidator must submit an application as set out in **Form F** to the Registrar.

6.2 Together with **Form F**, the Registrar requires written declarations as set out in **Form E** by all members and beneficiaries. The declarations must state that all the members and beneficiaries are satisfied with the relevant liquidation and distribution accounts and approved the accounts accordingly.

6.3 Board Notice 72 of 2001 sets out the relevant matters that the Registrar will consider before exempting a fund from sections 28(6) and/or 28(7) of the Act.

7. APPROVAL TO MAKE INTERIM PAYMENTS UNDER SECTION 28(12A) OF THE ACT

- 7.1 The Liquidator must submit an application as set out in **Form H** to the Registrar.
- 7.2 The Registrar will, in assessing the application for approval to make of interim payments under section 28(12A) of the Act, consider the requirements as prescribed under Board Notice 73 of 2001.

8. APPLICATION UNDER SECTION 28(17) FOR EXEMPTION FROM THE PROVISIONS OF SECTION 28(12) OF THE ACT (SUBMISSION OF FINAL ACCOUNTS)

The Liquidator or responsible person (appointed in terms of section 13B of the Act) of the administrator, where the Liquidator cannot be traced, must submit an application in the format set out in **Form G** to the Registrar, confirming that the liquidation has been completed in accordance with the requirements of section 28 of the Act and that all benefits have been paid to the members and/or beneficiaries.

9. APPLICATION UNDER SECTION 28(17) FOR EXEMPTION FROM THE PROVISIONS OF SECTION 28 (OTHER THAN SECTION 28(12)) OF THE ACT

- 9.1 The fund must submit an application in the format set out in **Form D** to the Registrar.
- 9.2 The Registrar will only consider an application for exemption from the provisions of section 28 of the Act where, on the date that the fund takes a resolution to liquidate or partially liquidate the fund due to the withdrawal of a participating employer, the following conditions apply: -
- (a) the average benefit per member is less than R50 000;
 - (b) the fund or the relevant participating employer withdrawing does not have more than 50 members;
 - (c) the fund or the relevant participating employer has assets less than R50 million; and
 - (d) the surplus apportionment scheme or nil return has been approved or noted by the Registrar.
- 9.3 The following must be complied with where a fund or a participating employer withdrawing from a fund has been exempted from the provisions of section 28 of the Act:
- (a) the board of the fund, Section 26 appointed trustee or Authorised representative must inform the Registrar of the name and contact details of the person who will be responsible for managing the winding down process of the fund as set out in **Form D**;

- (b) The person responsible for managing the winding down process, must at least every 90 days, effective on the date on which an exemption is granted, submit a written report to the Registrar containing the following-
 - (i) method used to calculate benefits;
 - (ii) communication to members and/or beneficiaries;
 - (iii) any outstanding tax issues;
 - (iv) any deaths of members subsequent to the date on which the exemption was granted;
 - (v) how objections to the benefit calculations were resolved;
 - (vi) payments of benefits; and
 - (vii) unclaimed benefits, if any.
 - (c) All benefits must be paid to members and/or beneficiaries within 12 months from the date on which the Registrar granted the exemption.
 - (d) A declaration of nil assets, members and liabilities must be submitted to the Registrar within 30 days after the final distribution of member and beneficiary benefits and must be accompanied by an application for the cancellation of the registration of the fund or participating employer in terms of section 27 of the Act, as set out in **Form J**.
- 9.4 The Registrar may withdraw an exemption granted where the members and/or beneficiaries of a fund or withdrawing participating employer have been prejudiced as a result of the exemption granted or where the requirements outlined in paragraph 9.3 are not complied with.

10. OTHER INFORMATION THAT THE REGISTRAR WILL REQUIRE FROM A FUND AND/OR LIQUIDATOR IN EXERCISING THEIR POWERS AND FUNCTIONS UNDER SECTION 28

10.1 *Submission of financial statements*

- 10.1.1 Funds are required to prepare and submit financial statements up to the day preceding the date on which the appointment of the Liquidator is approved by the Registrar under section 28(2) of the Act or the date on which the Registrar granted an exemption from the provisions of section 28 under section 28(17) of the Act.
- 10.1.2 Where the period following the date on which the latest annual financial statements was submitted to the Registrar up to the date on which the appointment of the Liquidator is approved by the Registrar under section 28(2) of the Act or the date of exemption in terms of section 28(17) of the Act exceeds 6 months, separate financial statements must be submitted.
- 10.1.3 Where the period referred to in paragraph 10.1.2 is less than 6 months, the financial statements may be prepared together with the preceding period, for a maximum period of 18 months. Where the previous financial statements were finalised and the period between the prior year-end and the liquidation date does not exceed 6 months, no financial statements need to be submitted.
- 10.1.4 Where the fund has changed its financial period as set out in paragraphs 10.1.2 and 10.1.3, the rules of the fund need not be amended to provide for such a change in year-end.

10.2. *Surplus apportionment*

10.2.1 When making application to the Registrar for the approval of a Liquidator, the board of the fund, Section 26 appointed trustee or Authorised representative must declare whether or not a surplus apportionment scheme or a nil return has already been submitted or whether the Liquidator will be responsible for the submission of such scheme or nil return. Surplus apportionment schemes or nil returns must be submitted in respect of the following:

- where a fund was registered prior to 7 March 2002 and the liquidation commenced after 7 December 2001; or
- where the partial dissolution as a result of the withdrawal of a participating employer commenced after 7 December 2001 and the participating employer was participating in the fund prior to surplus apportionment date.

10.2.2 Where the Liquidator will be responsible for the submission of a surplus apportionment scheme or a nil return, the application for the approval of the appointment of the Liquidator must be accompanied by a declaration by the Liquidator that he or she is aware of this responsibility and that he or she has the relevant knowledge and skill to be able to give effect to this responsibility as set out in **Form C**.

11. **CANCELLATION OF THE REGISTRATION OF A FUND OR CONFIRMATION OF THE COMPLETION OF THE PARTIAL LIQUIDATION**

In order for the Registrar to cancel the registration of a fund or participating employer, the Liquidator or responsible person (appointed in terms of section 13B) of the administrator, must submit an application as set out in **Form I**.

12. **ADDITIONAL INFORMATION NOT PROVIDED FOR IN THIS DIRECTIVE**

The Registrar may request any additional information not provided for in this Directive to assist him or her in exercising his or her powers and functions under section 28 of the Act.

13. **ELECTRONIC SUBMISSION OF APPLICATIONS**

13.1 All applications must be made electronically. Any enquiries relating to applications made, may be forwarded to penliq@fsb.co.za and must contain the Registrar's case number.

13.2 The applications referred to in this Directive are available on www.fsb.co.za under the retirement funds section. (Retirement Funds/ Electronic submissions/ Retirement Fund on-line system)

Yours sincerely



JA BOYD
FOR: REGISTRAR OF PENSION FUNDS